

2015 KCLM LEGISLATIVE UPDATES

AMENDMENT TO PAGES 2.4.1 – 2.4.4

KRS 15.520 Complaints against police officers – Manner of investigation and hearing

- (1) As used in this section:
 - (a) "Citizen means any individual who is not:
 1. A member or supervisor within the law enforcement agency that employs an officer; or
 2. An elected or appointed official within the unit of government under which the law enforcement agency that employs the officer is organized;
 - (b) "Complaint" means any statement by a citizen, whether written or verbal, that alleges any type of misconduct by an officer, including statements that are submitted or received anonymously;
 - (c) "Disciplinary action" means termination, demotion, a decrease in pay or grade, suspension without pay, and a written reprimand;
 - (d) "General employment policies" means the rules, regulations, policies, and procedures commonly applicable to the general workforce or civilian employees that are not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether those rules, regulations, policies, and procedures exist or appear in a departmental manual or handbook that is solely applicable to a law enforcement department or agency within the unit of government employing the officer;
 - (e) "Interrogation" means a formal investigative interview and does not mean conversations or meetings of supervisory personnel and subordinate officers that are not intended to result in disciplinary action, such as conversations or meetings held for the purpose of providing corrective instruction counseling or coaching;
 - (f) "Law enforcement procedures" means only those policies, rules, and customs that:
 1. Are specific to the conduct of officers in the exercise of law enforcement powers and functions, including, without limitation: use of force, conduct in the course of pursuits, conduct during stops or detentions of citizens, conduct in the course of interacting with, assisting, or questioning of citizens, and investigative conduct;
 2. Are carried out in the course of peace officer functions;
 3. Are not general employment policies; and
 4. That may exist in either written form or in the form of unwritten standards, practices, or protocols generally accepted and applied in the law enforcement profession.
 - (g) "Misconduct" means any act or omission by an officer that violates criminal law, law enforcement procedures, or the general employment policies of the employing agency; and
 - (h) "Officer" means a person employed as a full-time peace officer by a unit of government that receives funds under KRS 15.410 to 15.510 who has completed any officially established initial probationary period of employment lasting no longer than twelve (12) months not including, unless otherwise specified by the employing agency, any time the officer was employed and completing the basic training required by KRS 15.404.
- (2) In order to establish a minimum system of professional conduct for officers of local units of government of this Commonwealth, the following standards are stated as the intention of the General Assembly to deal fairly and set administrative due process rights in certain disciplinary matters concerning those officers of an employing unit of government that participates in the Kentucky Law Enforcement Foundation Program fund administered pursuant to KRS 15.430 and, at the same time, to provide a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by officers covered by this section.
- (3) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:
 - (a). If the complaint alleges criminal activity by an officer, the allegations may be investigated without a signed, sworn complaint of the citizen;
 - (b). If the complaint alleges any other type of violation not constituting criminal activity, including violations of law enforcement procedures or the general employment policies of the employing

agency, an affidavit, signed and sworn to by the citizen, shall be obtained, except as provided by paragraph (c) of this subsection; or

- (c) If a complaint is required to be obtained and the citizen, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the employing agency may investigate the allegations, but shall bring charges under subsection (6) of this section against the officer only if the employing agency can independently substantiate the allegations absent the sworn statement of the citizen;
- (4) (a) When an officer is accused of an act or omission that would constitute a violation of law enforcement procedures by any individual within the law enforcement agency employing the officer, including supervisors and elected or appointed officials of the officer's employing agency, the employing agency shall conform the conduct of any investigation to the provisions of subsection (5) of this section, shall formally charge the officer in accordance with subsection (6) of this section, and shall conduct a hearing in accordance with subsection (7) of this section before any disciplinary action shall be taken against the officer.
- (b) The provisions of this subsection shall not prevent the employing agency from suspending the officer, with or without pay, during an investigation and pending the final disposition of any formal charges, except that an officer suspended without pay shall be entitled to full back pay and benefits for the regular hours he or she would have worked if no formal charges are brought or the hearing authority finds the officer not guilty of the charges.
- (c) An employing agency shall not be required to follow the provisions of this section in addressing conduct by the officer that would constitute a violation of the general employment policies of the employing agency.
- (5) (a) Any complaint filed by a citizen under subsection (3) of this section or any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section shall be investigated by the employing agency or another designated law enforcement agency in accordance with the provisions of this subsection if the employing agency determines that an investigation of the complaint or the alleged conduct is warranted.
- (b) No threats, promises, or coercions shall be used at any time against any officer while he or she is a suspect in a criminal case or has been accused of a violation of law enforcement procedures. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension.
- (c) Unless otherwise agreed to in writing by the officer, no police officer shall be subjected to interrogation for alleged conduct that violates law enforcement procedures until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery
- (d) The interrogation shall be conducted while the officer is on duty. The officer may be required to submit a written report of the alleged incident if the request is made by the employing agency no later than the end of the subject officer's next tour of duty after the tour of duty during which the employing agency initially was made aware of the complaint.
- (e) If an officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he or she shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences. (e) Any charge involving violation of any local unit of government rule or regulation shall be made in writing with sufficient specificity so as to fully inform the police officer of the nature and circumstances of the alleged violation in order that he may be able to properly defend himself. The charge shall be served on the police officer in writing;
- (6) (a) If it is determined through investigation or other means that the facts alleged in a citizen complaint or in an accusation of a violation of law enforcement procedures warrant charging the officer, the charge shall be made in writing with sufficient specificity so as to fully inform the officer of the nature and circumstances of the alleged violation in order that he or she may be able to properly defend himself for herself.

- (b) The charge shall be signed by a representative of the employing agency, shall set out the disciplinary action recommended or imposed, and shall be served on the [police] officer in writing by certified mail, return receipt requested, or by personal delivery.
 - (c) When an officer has been charged with a violation of law enforcement procedures, no public statements shall be made concerning the alleged violation by any person or persons of the employing agency or the officer so charged, until final disposition of the charges;
 - (d) No officer as a condition of continued employment by the employing agency shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature.
- (7) Unless waived by the charged officer in writing, a hearing shall be conducted by the officer's appointing authority to determine whether there is substantial evidence to prove the charges and to determine what if any, disciplinary action shall be taken if substantial evidence does exist. In conducting a hearing, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any officer charged, except as otherwise agreed to in writing by the officer and the employing agency:
- (a) The accused officer shall be given at least twelve (12) days written notice of any hearing. The notice of hearing shall be served on the officer by certified mail, return receipt requested, or by personal delivery;
 - (b) Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the officer no less twelve days (12) prior to the time of the hearing;
 - (c) At any hearing based upon the sworn complaint of a citizen, the citizen shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested or by personal delivery;
 - (d) If the return receipt has been returned unsigned, or the individual does not appear, except due to circumstances beyond his or her control he or she cannot appear at the time and place of the hearing, any charge resulting from a complaint made by that citizen shall not be considered by the hearing authority and shall be dismissed with prejudice;
 - (e) The accused officer shall have the right and opportunity to obtain and have counsel present, and to be represented by counsel;
 - (f) The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience by the proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;
 - (g) The accused officer shall be allowed to present, witnesses and any documentary or other relevant evidence the officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;
 - (h) If any officer who has been suspended with or without pay is not given a hearing as provided by this section within seventy-five (75) days of any charge being filed pursuant to this section, the charge shall be dismissed with prejudice and shall not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits;
 - (i) Any officer who has been suspended without pay who is found not guilty of the charges by the hearing authority shall be reinstated with the full back pay and benefits for the regular hours he or she would have worked;
 - (j) The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight of credibility and whether the officer has been materially prejudiced; and
 - (k) To the extent the provisions of KRS 61.805 to 61.850 are applicable, the hearing authority may conduct the hearing required by this subsection in a closed session, unless the officer requests of

- the hearing authority in writing at least three (3) days prior to the hearing that the hearing be open to the public.
- (8) (a) Any officer who is found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the employing agency may be located within thirty (30) days of the date written findings are issued to appeal the action of the hearing authority. The appeal shall be initiated by the filing of a complaint in the same manner as any civil action under the Rules of Civil Procedure and shall include a copy of the hearing authority's final order. The Circuit Court review of the case shall be based solely upon the administrative record created before the hearing authority and any new evidence offered by the officer regarding alleged arbitrariness on the part of the hearing authority.
- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in any civil action.
- (9) The provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall not apply in any proposed disciplinary action arising from a citizen complaint made under subsection (3) of this section or arising from any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section. This section shall not be interpreted or construed to alter or impair any of the substantive rights provided to a city police officer under KRS 90.310 to 90.410, 95.450, and 95.765 for any proposed disciplinary action or other matters not arising under subsections (3) and (4) of this section, including proposed actions involving alleged violations of general employment policies. To the extent that the provisions of this section are inapplicable to any proposed disciplinary action against a city police officer, the provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall remain in full force and effect.
- (10) As the provisions of this section relate to a minimum system of professional conduct, nothing in this section shall be interpreted or construed to:
- (a) Limit or to in any way affect any rights previously afforded to officers of the Commonwealth by statute, collective bargaining or working agreement, or legally adopted ordinance;
- (b) Preclude an employing agency from investigating and charging an officer both criminally and administratively;
- (c) Prevent the suspension with or without pay or reassignment of an officer during an investigation and pending final disposition charges;
- (d) Permit an employing agency to categorize and treat any complaint that originates from a citizen as an internal matter in order to avoid application of all of the provisions of this section to the final disposition of a citizen's complaint;
- (e) Apply any disciplinary action required by this section to actions taken by an employing agency that is not related to misconduct by a law enforcement officer, such as personnel decisions made by the employing agency due to a lack of resources or personnel decisions related to a chief's management of a department; or
- (f) Prevent an employing agency from electing to apply the provisions of this section, or parts thereof, in circumstances that would not be covered under this section
- (11) This section shall not apply to officers employed by a consolidated local government that receives funds under KRS 15.410 to 15.510, who shall instead be governed by the provisions of Section 2 of this Act.

AMENDMENT TO PAGES 4.1 – 4.4

KRS 600.020 Definitions for KRS Chapters 600 to 645

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) **"Abused or neglected child"** means a child whose health or welfare is harmed or threatened with harm when:
- (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:
1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
 5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 7. Abandons or exploits the child;
 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or
 - (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age.
 - (2) **"Aggravated circumstances"** means the existence of one (1) or more of the following conditions:
 - (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
 - (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
 - (c) The parent has sexually abused the child and has refused available treatment;
 - (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
 - (e) The parent has caused the child serious physical injury;
 - (3) **"Beyond the control of parents"** means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;
 - (4) **"Beyond the control of school"** means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;
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- (7) **"Certified juvenile facility staff"** means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
 - (8) **"Child"** means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
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- (14) **"Complaint"** means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
 - (15) **"Court"** means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
 - (16) **"Court-designated worker"** means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to

arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(17) "**Deadly weapon**" has the same meaning as it does in KRS 500.080;

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(19) "**Dependent child**" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(20) "**Detention**" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;

(21) "**Detention hearing**" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

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(24) "**Emergency shelter**" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(25) "**Emotional injury**" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;

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(27) "**Firearm**" shall have the same meaning as in KRS 237.060 and 527.010;

(28) "**Foster family home**" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

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(30) "**Habitual runaway**" means any child who has been found by the court to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least three (3) days during a one (1) year period;

(31) "**Habitual truant**" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 two (2) or more times during a one (1) year period;

(32) "**Hospital**" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

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(35) "**Intentionally**" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(36) "**Least restrictive alternative**" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence;

(37) "**Motor vehicle offense**" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

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(39) "**Needs of the child**" means necessary food, clothing, health, shelter, and education;

(40) "**Nonoffender**" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;

(41) "**Nonsecure facility**" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

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(44) "**Parent**" means the biological or adoptive mother or father of a child;

(45) "**Person exercising custodial control or supervision**" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(46) "**Petition**" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(47) "**Physical injury**" means substantial physical pain or any impairment of physical condition;

(48) "**Physically secure facility**" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(49) "**Public offense action**" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

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(52) "**Retain in custody**" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

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(54) "**School personnel**" means those certified persons under the supervision of the local public or private education agency;

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(56) "**Secure juvenile detention facility**" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;

(57) "**Serious physical injury**" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(58) "**Sexual abuse**" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(59) "**Sexual exploitation**" includes, but is not limited to, a situation in which a parent, guardian, person in a position of authority or special trust as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(60) "**Social service worker**" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(61) "**Staff secure facility for residential treatment**" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(62)(a) "**Status offense action**" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders.

Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;
2. Habitual runaway;
3. Habitual truant;
4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
5. Alcohol offenses as provided in KRS 244.085.

(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew;

(63) "**Take into custody**" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

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- (66) "**Valid court order**" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) Who was brought before the court and made subject to the order;
 - (b) Whose future conduct was regulated by the order;
 - (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
 - (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.
- (67) "**Violation**" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (68) "**Youth alternative center**" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and
- (69) "**Youthful offender**" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

AMENDMENT TO PAGE 5.2.7

KRS 189.125 Requirements of use of seat belts, child restraint systems, and child booster seats – Exceptions

3 Penalty: KRS 189.990(24)&(25) 6 Penalty: KRS 189.990(25)&(26)

- (1) Except as otherwise provided in this section, "**motor vehicle**" as used in this section means every vehicle designed to carry fifteen (15) or fewer passengers and used for the transportation of persons, but the term does not include:
- (a) Motorcycles;
 - (b) Motor driven cycles; or
 - (c) Farm trucks registered for agricultural use only and having a gross weight of one (1) ton or more.
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- (3) (a) Any driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle operated on the roadways, streets, and highways of this state, shall have the child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.
- (b) Any driver of a motor vehicle, when transporting a child under the age of eight (8) years who is between forty (40) inches and fifty-seven (57) inches in height in a motor vehicle operated on the roadways, streets, and highways of this state, shall have the child properly secured in a child booster seat. A child of any age who is greater than fifty-seven (57) inches in height shall not be required to be secured in a child booster seat under this section.
- (4) As used in this section:
- (a) "**Child restraint system**" means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards.
 - (b) "**Child booster seat**" means a child passenger restraint system that meets the standards set forth in 49 C.F.R. Part 571 that is designed to elevate a child to properly sit in a federally approved lap and shoulder belt system.
- (5) Failure to use a child passenger restraint system or a child booster seat shall not be considered as contributory negligence, nor shall such failure to use a passenger restraint system or booster seat be admissible as evidence in the trial of any civil action. Failure of any person to wear a seat belt shall not constitute negligence per se.
- (6) A person shall not operate a motor vehicle manufactured after 1981 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt, unless the passenger is a child who is secured as required in subsection (3) of this section. The provisions of this subsection shall not apply to:

- (a) A person who has in his possession at the time of the conduct in question a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or
- (b) A letter carrier of the United States postal service while engaged in the performance of his duties.
- (7) A conviction for a violation of subsection (6) of this section shall not be transmitted by the court to the Transportation Cabinet. The Transportation Cabinet shall not include a conviction for a violation of subsection (6) of this section as part of any person's driving history record.
- (8) The provisions of subsection (6) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsection (6) of this section may be enacted by any unit of local government.

AMENDMENTS TO SECTION 5.5

KRS 189A.005 Definitions for chapter – License suspensions

As used in this chapter, unless the context requires otherwise:

- (1) "**Alcohol concentration**" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;
- (2) "**Ignition interlock device**" means a device, certified by the Transportation Cabinet for use in this Commonwealth under subsection (1) of KRS 189A.500, that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting, and from continuing to operate, if a driver's breath alcohol concentration exceeds 0.02, as measured by the device;
- (3) "**Ignition Interlock Certification of Installation**" means a certificate providing that the installed ignition interlock device is certified for use in the Commonwealth under subsection (1) of Section 15 of this Act;
- (4) "**Ignition Interlock Device Provider**" means any person or company engaged in the business of manufacturing, selling, leasing, servicing, or monitoring ignition interlock devices within the Commonwealth;
- (5) "**Ignition interlock license**" means a motor vehicle or motorcycle operator's license issued or granted by the laws of the Commonwealth of Kentucky that, with limited exceptions, permits a person to drive only motor vehicles or motorcycles equipped with a functioning ignition interlock device;
- (6) "**License**" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:
 - (a) Any temporary license or instruction permit;
 - (b) The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and
 - (c) Any nonresident's operating privilege as defined in KRS Chapter 186 or 189;
- (7) "**Limited access highway**" has the same meaning as "limited access facility" does in KRS 177.220;
- (8) "**Refusal**" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered;
- (9) When age is a factor, it shall mean age at the time of the commission of the offense; and
- (10) Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment.

KRS 189A.090 Operating motor vehicle while license is revoked or suspended for driving under the influence prohibited – Operating motor vehicle without required ignition interlock device prohibited – Penalties

- (1) No person shall operate or be in physical control of a motor vehicle while his or her license is revoked or suspended under KRS Chapter 189A, or upon the conclusion of a license revocation period pursuant to Section 8 of this Act unless the person has his or her valid ignition interlock license in the person's possession and the motor vehicle or motorcycle is equipped with a functioning ignition interlock device as required by KRS 189A.420.
- (2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:
 - (a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d) or (e), in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;
 - (b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d) or (e), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;
 - (c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d) or (e), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.
 - (d) At the sole discretion of the court, in the interest of public safety and upon a written finding in the record for good cause shown, the court may order that, following any period of incarceration required for the conviction of an offense under paragraph (a), (b), or (c) of this subsection, the eligible person is authorized to apply for and the cabinet shall issue to the person an ignition interlock license for the remainder of the original period of suspension or revocation and for the entire period of the new revocation if the person is and remains otherwise eligible for such license.
- (3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) Upon a finding of a violation of any of the requirements of an ignition interlock license the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2) (b) or (c) of this section.

KRS 189A.105 Effect of refusal to submit to tests – Information required to be provided when tests requested – Court-ordered testing – Right to consult attorney before submitting to tests – Personal testing option

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
 1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests his or her license will be suspended by the court at the time of arraignment, and he or she will be unable to obtain an ignition interlock license during the suspension period; and
 2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010 (1), and that although his or her license will be suspended, he or she

may be eligible immediately for an ignition interlock license allowing him or her to drive during the period of suspension and, if he or she is convicted, he or she will receive a credit toward any other ignition interlock requirement arising from this arrest; and

3. That if the person first submits to the requested alcohol and substance tests, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating officer shall seek such a search warrant for blood, breath, or urine testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged with and convicted of an offense arising from the accident, the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.
- (3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney, and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.
- (4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

KRS 189A.107 License suspension for refusal to take alcohol or substance tests - Hearing on alleged refusal - Time period for suspension

- (1) A person who refuses to submit to an alcohol concentration or substance test requested by an officer having reasonable grounds to believe that the person violated KRS 189A.010(1) shall have his driver's license suspended by the court for the pendency of the action under KRS 189A.200 unless, at the time of arraignment, the person files a motion with the court waiving the right to judicial review of the suspension, after which the court, in its discretion, may authorize the person to apply to the cabinet for issuance of an ignition interlock license under Section 11 of this Act for the period of the suspension. If the person complies with the requirements of Section 11 of this Act and is otherwise eligible, the cabinet shall issue the person an ignition interlock license for the remainder of the suspension period and apply the court-determined credit on a day-for-day basis for any subsequent ignition interlock requirement arising from the same incident.
- (2) In the event a defendant is not convicted of a violation of KRS 189A.010(1) . . . the court shall conduct a hearing, without a jury, to determine by clear and convincing evidence if the person actually refused the testing. . . . If the court finds that the person did refuse to submit to the testing, the court shall suspend the person's driver's license for a period of time within the time range specified that the license would have been suspended upon conviction as set forth in KRS 189A.070(1), except that the court, in its discretion, may authorize the person to apply to the cabinet for issuance of an ignition interlock license under Section 11 of this Act for the period of the suspension. If the person complies with the requirements of Section 11 of this Act and is otherwise eligible, the cabinet shall issue the person an ignition interlock license for the remainder of the

suspension period and grant the person day-for-day credit for any subsequent ignition interlock requirement arising from the same incident.

KRS 189A.340 Ignition interlock devices

- (1) Except as provided in subsection (4) of KRS 189A.420, at the time that the court revokes a person's license under any provision of KRS 189A.070, for an offense in violation of KRS 189A.010(a),(b), (e), or (f) the court shall also order that, at the conclusion of the license revocation, any license the person shall be issued shall restrict the person to operating only a motor vehicle or motorcycle equipped with a functioning ignition interlock device.
 - (a) The ignition interlock periods shall be as follows:
 1. The first time in a five (5) year period a functioning ignition interlock device shall be installed for a period of six (6) months, if at the time of offense, any of the aggravating circumstances listed under subsection (11) of KRS 189A.010 were present while the person was operating or in physical control of a motor vehicle.
 2. The second time in a five (5) year period a functioning ignition interlock device shall be installed for a period of twelve (12) months.
 3. The third or subsequent time in a five (5) year period a functioning ignition interlock device shall be installed for a period of thirty (30) months.
 - (b) In determining the five (5) year period under paragraph (a) of this subsection, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered, resulting in the license revocations described in KRS 189A.070.
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KRS 189A.345 Penalties for violation of KRS 189A.410 and 189A.340 governing ignition interlock devices

- (1) No person shall operate a motor vehicle or motorcycle without a functioning ignition interlock device when prohibited to do so under KRS 189A.420.
- (2) (a) No person shall start a motor vehicle or motorcycle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle or motorcycle to a person subject to the prohibition established in KRS 189A.420.
- (b) Any person who violates paragraph (a) of this subsection shall:
 1. For a first offense, be guilty of a Class B misdemeanor; and
 2. For a second or subsequent offense, be guilty of a Class A misdemeanor.
- (3) (a) No person shall:
 1. Knowingly install a defective ignition interlock device on a motor vehicle or motorcycle; or
 2. Tamper with an installed ignition interlock device with the intent of rendering it defective.
- (b) Any person who violates paragraph (a) of this subsection shall:
 1. For a first offense, be guilty of a Class B misdemeanor; and
 2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from installing ignition interlock devices or directing others in the installation of ignition interlock devices.
- (4) (a) No person shall direct another person to install a defective ignition interlock device on a motor vehicle or motorcycle when the person giving the direction knows that the ignition interlock device is defective.
- (b) Any person who violates paragraph (a) of this subsection shall:
 1. For a first offense, be guilty of a Class B misdemeanor; and
 2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from directing others in the installation of ignition interlock devices or installing ignition interlock devices.

KRS 189A.440 Prohibition against use of vehicle other than for purpose authorized by hardship license – Penalty - Penalty for false application statement

- (1) No person who is issued an ignition interlock license under KRS 189A.420 a hardship license shall operate a motor vehicle at any time, place, or for any purpose other than those authorized upon the face of the ignition interlock or hardship license issued under KRS 189A.410.
- (2) Any defendant who violates the provisions of subsection (1) of this section is guilty of a Class A misdemeanor, and shall have his license revoked for the initial period of revocation plus an additional six (6) months.
- (3) Any defendant or any other person who knowingly assists the defendant in making a false application statement is guilty of a Class A misdemeanor and shall have his motor vehicle or motorcycle operator's license revoked for six (6) months.

AMENDMENT TO PAGE 6.1.1

KRS 217.015 Definitions for KRS 217.005 to 217.215

For the purposes of KRS 217.005 to 217.215:

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- (9) "**Dispense**" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

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- (28) "**Legend drug**" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";

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- (35) "**Practitioner**" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in KRS 320.240(12) to (14), advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, and physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.560(3) and (4);

- (36) "**Prescription**" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, advanced practice registered nurse, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

- (37) "**Prescription blank**" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;

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- (43) "**Second or subsequent offense**" has the same meaning as it does in KRS 218A.010;

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- (46) "**Traffic**" has the same meaning as it does in KRS 218A.010;

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AMENDMENT TO PAGE 7.1.7

KRS 237.110 License to carry concealed deadly weapon -- Criteria -- Training -- Paper or electronic application -- Issuance and denial of licenses -- Automated listing of license holders - Suspension or revocation -- Renewal -- Prohibitions -- Reciprocity -- Reports -- Requirements for training classes.

- (1) The Department of State Police is authorized to issue and renew licenses to carry concealed firearms or other deadly weapons, or a combination thereof, to persons qualified as provided in this section.
- (2) An original or renewal license issued pursuant to this section shall:
 - (a) Be valid throughout the Commonwealth and, except as provided in this section or other specific section of the Kentucky Revised Statutes or federal law, permit the holder of the license to carry

firearms, ammunition, or other deadly weapons, or a combination thereof, at any location in the Commonwealth.

- (b) Unless revoked or suspended as provided by law, be valid for a period of five (5) years from the date of issuance;
- (c) Authorize the holder of the license to carry a concealed firearm or other deadly weapon, or a combination thereof, on or about his or her person; and
- (d) Authorize the holder of the license to carry ammunition for a firearm on or about his or her person.

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(10) The Department of Kentucky State Police shall maintain an automated listing of license holders and pertinent information, and this information shall be available upon request, at all times to all Kentucky, federal, and other states' law enforcement agencies. A request for the entire list of licensees, or for all licensees in a geographic area, shall be denied. Only requests relating to a named licensee shall be honored or available to law enforcement agencies. Information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of Kentucky State Police, shall provide any information to any requester not entitled to it by law.

(11) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss, theft, or destruction of a license, the licensee shall notify the Department of Kentucky State Police of the loss, theft, or destruction. Failure to notify the Department of Kentucky State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the District Court. No court costs shall be assessed for a violation of this subsection. , , , ,

(12) If a license is lost, stolen, or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may , , , obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost, stolen, or destroyed.

(13)(a) The commissioner of the Department of Kentucky State Police, or his designee in writing, shall revoke the license of any person who becomes permanently ineligible to be issued a license or have a license renewed under the criteria set forth in this section.

(b) The commissioner of the Department of Kentucky State Police, or his designee in writing, shall suspend the license of any person who becomes temporarily ineligible to be issued a license or have a license renewed under the criteria set forth in this section. The license shall remain suspended until the person is again eligible for the issuance or renewal of a license.

(c) Upon the suspension or revocation of a license, the commissioner of the Department of Kentucky State Police, or his designee in writing, shall:

1. Order any peace officer to seize the license from the person whose license was suspended or revoked; or
2. Direct the person whose license was suspended or revoked to surrender the license to the sheriff of the person's county of residence within two (2) business days of the receipt of the notice.

* * * * *

(h) If the license is not surrendered as ordered, the commissioner of the Department of Kentucky State Police shall order a peace officer to seize the license and deliver it to the commissioner.

(i) Failure to surrender a suspended or revoked license as ordered is a Class A misdemeanor.

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(k) When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be

permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

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- (15) The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court, but no court costs shall be assessed.
- (16) Except as provided in KRS 527.020, no license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
- (a) Any police station or sheriff's office;
 - (b) Any detention facility, prison, or jail;
 - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding;
 - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;
 - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
 - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
 - (g) An area of an airport to which access is controlled by the inspection of persons and property; or
 - (h) Any place where the carrying of firearms is prohibited by federal law.
- (17) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employee, except that the Justice and Public Safety Cabinet may prohibit an employee from carrying any weapons, or ammunition, or both other than the weapons, or ammunition, or both issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon, or ammunition, or both in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

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- (20)(a) A person who is not a resident of Kentucky and who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

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AMENDMENT TO PAGE 8.2.1

KRS 507.010 Definitions

As used in this chapter:

- (1) "Abuse" has the same meaning as in KRS 508.090;
- (2) "Criminal homicide" means that a person is guilty of causing the death of another human being under circumstances which constitute murder, manslaughter in the first degree, manslaughter in the second degree, or reckless homicide; and
- (3) "Physically helpless" and "mentally helpless" have the same meaning as in KRS 508.090.

KRS 507.030 Manslaughter in the first degree

- (1) A person is guilty of manslaughter in the first degree when:
 - (a) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or
 - (b) With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020; or
 - (c) Through circumstances not otherwise constituting the offense of murder, he or she intentionally abuses another person or knowingly permits another person of whom he or she has actual custody to be abused and thereby causes death to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Manslaughter in the first degree is a Class B felony.

AMENDMENT TO PAGES 8.7.1 & 8.7.2

KRS 528.010 Definitions

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "**Advancing gambling activity**" -- A person "advances gambling activity" when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who gambles at a social game of chance on equal terms with other participants does not otherwise advance gambling activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the game as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein.
- (2) "**Bookmaking**" means advancing gambling activity by unlawfully accepting bets upon the outcome of future contingent events from members of the public as a business.
- (3) (a) "**Gambling**" means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.
(b) Gambling shall not mean charitable gaming which is licensed and regulated under the provisions of KRS Chapter 238.
- (4) "**Gambling device**" means:
 - (a) Any so-called slot machine or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which when operated may deliver, as a result of the application of an element of chance, any money or property, or by the operation of which a

person may become entitled to receive, as the result of the application of an element of chance, any money or property;

- (b) Any mechanical or electronic device permanently located in a business establishment, including a private club, that is offered or made available to a person to play or participate in a simulated gambling program in return for direct or indirect consideration, including but not limited to consideration paid for Internet access or computer time, or a sweepstakes entry, which when operated may deliver as a result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as a result of the application of an element of chance, any money or property; or
- (c) Any other machine or any mechanical or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property;

(d) But, the following shall not be considered gambling devices within this definition:

1. Devices dispensing or selling combination or French pools on licensed, regular racetracks during races on said tracks.
2. Devices dispensing or selling combination or French Pools on historical races at licensed, regular racetracks as lawfully authorized by the Kentucky Horse Racing Commission.
3. Electro-mechanical pinball machines specially designed, constructed, set up, and kept to be played for amusement only. Any pinball machine shall be made to receive and react only to the deposit of coins during the course of a game. The ultimate and only award given directly or indirectly to any player for the attainment of a winning score or combination on any pinball machine shall be the right to play one (1) or more additional games immediately on the same device at no further cost. The maximum number of free games that can be won, registered, or accumulated at one (1) time in operation of any pinball machine shall not exceed thirty (30) free games. Any pinball machine shall be made to discharge accumulated free games only by reactivating the playing mechanism once for each game released. Any pinball machine shall be made and kept with no meter or system to preserve a record of free games played, awarded, or discharged. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums, or property of any kind for scores, combinations, or free games obtained in playing the pinball machine in which the person has an interest as owner, operator, keeper, or otherwise.
4. Devices used in the conduct of charitable gaming.

(5) **"Lottery and gift enterprise"** means:

(a) A gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one (1) or more of which are to be designated the winning ones; and
2. The ultimate winner is to be determined by a drawing or by some other method based upon the element of chance; and
3. The holders of the winning chances are to receive something of value.

(b) A gift enterprise or referral sales plan which meets the elements of a lottery listed in paragraph (a) of this subsection is to be considered a lottery under this chapter.

(6) **"Mutuel" or "the numbers games"** means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(7) **"Player"** means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity. A person who engages in "bookmaking" as defined in subsection (2) of this section is not a "player." The status of a "player" shall be a defense to any prosecution under this chapter.

- (8) "**Profiting from gambling activity**" -- A person "profits from gambling activity" when, other than as a player, he accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.
- (9) "**Simulated gambling program**" means any method intended to be used by a person playing, participating, or interacting with an electronic device that may, through the application of an element of chance, either deliver money or property or an entitlement to receive money or property.
- (10) "**Something of value**" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.
- (11) "**Charitable gaming**" means games of chance conducted by charitable organizations licensed and regulated under the provisions of KRS Chapter 238.

AMENDMENT TO PAGE 8.7.9

KRS 529.180 Ignorance of human trafficking minor victim's actual age not a defense

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity with a minor, it shall not be a defense that the defendant was unaware of the minor's actual age.

AMENDMENT TO PAGE 8.7.15

KRS 531.330 Presumptions as to minority

- (1) For purposes of KRS 529.040 where the offense involves commercial sexual activity and for the purposes of KRS 530.070, 531.080 and 531.300 to 531.370, any person who appears to be under the age of 18, or under the age of 16, shall be presumed to be under the age of 18, or under the age of 16, as the case may be.
- (2) In any prosecution under KRS 529.040 where the offense involves commercial sexual activity by a minor and in any prosecution under KRS 530.070, 531.080 and 531.300 to 531.370, the defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.
- (3) The presumption raised in subsection (1) of this section may be rebutted by competent evidence.